Supreme Court, U. S.
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In the

Supreme Court of the United States

OCTOBER TERM, 1976

No. 76-885

AMANDA ALICE SPILLMAN,

Petitioner,

v.

THE CITY OF DALLAS,

Respondent.

On Petition for a Writ of Certiorari to the Court of Civil Appeals for the Eleventh Supreme Judicial District of Texas

BRIEF OF THE RESPONDENTS IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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LOWER COURT OPINIONS

The opinion of the Texas Court of Civil Appeals for the Eleventh Supreme Judicial District dated March 11, 1976, reported at 535 S.W.2d 717, is printed in Appendix A, Page 1 of Petitioner's Writ of Certiorari.

JURISDICTION

The judgment of the Court of Civil Appeals for the Eleventh Supreme Judicial District of Texas was entered on March 11, 1976. Motion for rehearing thereon was then denied and Petitioner applied to the Supreme Court of Texas for writ of error. The Supreme Court of Texas denied Petitioner's writ of error and also denied Petitioner's motion for rehearing thereon on September 29, 1976. This returns the record to the Court of Civil Appeals and makes its judgment final.

Petitioner invokes the jurisdiction of this Court under 28 U.S.C., §1257(3).

QUESTIONS PRESENTED BY PETITIONERS

I.

Whether the Supreme Court will review a state court decision which involves admissibility of evidence and preservation of error under state procedural law and which decision does not involve a federal question.

II.

Whether Petitioner has a federally guaranteed right to a jury trial in a state court proceeding.

STATEMENT OF THE CASE

In this condemnation case, tried before a jury, the right to take was stipulated with the only issue left for decision being the amount of damages to which Petitioner, the landowner, was entitled.

Petitioner's value testimony, considering the land as useable

for a purpose not legally permissible, was excluded. Petitioner then presented testimony as to the value of the land for uses legally permissible, which testimony was admitted. That was the only value testimony introduced in the trial of the case.

When Petitioner rested, Respondent moved the Court to instruct the jury to return a verdict for Petitioner for the amount of her value testimony, or in the alternative take the case from the jury and enter judgment for Petitioner for such amount. The Court granted the motion for instructed verdict. (Sf, p. 223) However, subsequently, the court withdrew the case from the jury and entered judgment for Petitioner for such sum, $62,274.00 (Sf, p. 231).

Petitioner appealed to the Court of Civil Appeals without first filing a Motion for new trial in the trial court, complaining of the exclusion of testimony by the trial court. The Court of Civil Appeals correctly held that Rule 324 of the Texas Rules of Civil Procedure (Petitioner's Appendix C-1) requires a party to file a motion for new trial in the trial court if complaint is made on appeal of evidentiary rulings. The Texas Supreme Court approved the Court of Civil appeals opinion by refusing to accept Petitioner's writ of error.

ARGUMENT AND AUTHORITIES

I.

THE UNITED STATES SUPREME COURT WILL NOT REVIEW A STATE COURT DECISION SUCH AS THE ONE PRESENTED BY PETITIONER IN WHICH THERE IS NO FEDERAL QUESTION.

The rule with respect to the United States Supreme Court reviewing state court decisions has been settled for many years. The requirements are that (1) the federal question arose in the state court, (2) the federal question was decided by the state court, (3) the federal question must have been decided in order to induce the judgment, and (4) that it is not sufficient to show that the question might have arisen and been applicable, unless it is further shown that it was applied by the state court. *Crowell v. Randell,* (1836) 10 Pet (U.S.) 368, 9 L.Ed. 458.

The Court has subsequently said that where a state court decision "might have been either on a state ground or on a federal ground and the state ground is sufficient to sustain the judgment, the Court will not undertake to review it." *Williams v. Kaiser,* 323 U.S. 470, 89 L.Ed. 398; *Stembridge v. Georgia,* 343 U.S. 541, 96 L.Ed. 1130. In the later case of *Durley v. Mayo,* 351 U.S. 277, 100 L.Ed. 1178, the Court goes even further and says that ". . . petitioner, in order to establish our jurisdiction, must demonstrate that neither of these state grounds can account for the decision below." Thus it is that Petitioner has the burden of affirmatively showing that a state court decision was based necessarily on the decision of a federal question.

Applying the law established by these cases to the present situation the Respondent would point out that the decision in the state court, not only could have been based on a state ground, but

by that court's pronouncement was in fact based on Texas procedural law. Rule 324 of the Texas Rules of Civil Procedure (Petitioner's Appendix C-2) provides that as a prerequisite to appeal of a trial court decision in a case tried to a jury, a party must file a motion for new trial in the trial court setting out that party's points of error. This prerequisite applies to all error except the trial court's action in rendering judgment, instructing a verdict or in rendering or refusing to render judgment non obstante verdicto.

The Texas Supreme Court in *Waggoner v. Foster,* 341 S.W.2d 887 (1960), interprets that exception to mean that if a party wishes to appeal the granting of a motion for judgment non obstante verdicto, he may do so, but he may complain only of that action. The Court says,

> "It was not the purpose of that language to eliminate the necessity for complaining in a motion for new trial of other errors committed on the trial."

In an opinion regarding Petitioner's case written by the Court of Civil Appeals (Petitioner's Appendix A) and approved by the Texas Supreme Court, the Court of Civil Appeals states:

> "Condemnee did not file a motion for new trial. All points of error relate to the exclusion of evidence or matters other than the granting of the instructed verdict."

Then, after reviewing Texas procedural law regarding the necessity of filing a motion for new trial, the court concludes by saying,

> "Condemnee's points of error were not properly perfected in a motion for new trial. They are overruled. Judgment of the trial court is affirmed."

Therefore it is obvious that no federal question was either

presented to, considered by, or necessary for the Texas Appellate Court decision of Petitioner's case. That decision was based entirely upon Texas procedural law and upon Petitioner's failure to adhere to the appellate procedure established by Texas legislative and judicial pronouncements. Petitioner's rights have not been denied if the state provides the means for Petitioner to be heard and Petitioner chooses not to utilize that means.

II.

THE PETITIONER HAS NOT BEEN DENIED HER RIGHT OF TRIAL BY JURY BECAUSE AMENDMENT VII TO THE UNITED STATES CONSTITUTION DOES NOT APPLY TO STATES AND IT IS NOT MADE APPLICABLE TO THE STATES BY AMENDMENT XIV TO THE UNITED STATES CONSTITUTION.

Amendment VII of the United States Constitution does not require that trials in state courts be by jury. *Walker v. Sauvinet,* 92 U.S. 90, 23 L.Ed. 678. The United States Supreme Court in *Hardware Dealers Mutual Fire Insurance Co. v. Glidden,* 284 U.S. 149, 76 L.Ed. 214, held as follows:

> "The Fourteenth Amendment neither implies that all trials must be by jury, nor guarantees any particular form or method of state procedure. (citing cases) In the exercise of that power and to satisfy a public need, a state may choose the remedy best adapted, in the legislative judgment, to protect the interests concerned, provided its choice is not unreasonable or arbitrary, and the procedure it adopts satisfies the constitutional requirements of reasonable notice and the opportunity to be heard."

The Petitioner, therefore, cannot complain that she has been denied a federally guaranteed right to a trial by jury in a state court since that right does not exist. The United States Supreme Court has consistently declined to declare the Seventh Amendment of the United States Constitution applicable to the states through the due process clause of the Fourteenth Amendment. Furthermore, the Respondent contends that the trial court's instructing a verdict is a judicial function required by the weight and sufficiency of evidence of each individual case. This function has been approved by the Supreme Court and compared to the trial court's exercising its discretion as to relevancy or materiality of evidence. *Galloway v. U.S.,* 319 U.S. 371, 87 L.Ed. 1458; *Wagner Electric Mfg. Co. v. Lyndon,* 262 U.S. 225, 67 L.Ed. 961. The Petitioner cannot complain that she was denied her right to trial by jury if, after she had presented all her admissible evidence to a jury, the trial court recognized that there was no question of fact for the jury to decide and therefore instructed a verdict. Since this verdict has been upheld by the highest appellate court in the state, the Petitioner cannot now seek federal review of state procedural law by calling it denial of trial by jury.

CONCLUSION

Respondents respectfully submit that the Petitioner has not shown that she is entitled to the relief requested in her petition for the following reasons:

(1) Petitioner has not shown that the outcome of her case was based on the decision of a federal question.

(2) Petitioner does not have a federally guaranteed right to a jury trial in a state court proceeding.

WHEREFORE, PREMISES CONSIDERED, Respondents pray that this Court deny Petitioners' Writ of Certiorari.

Respectfully submitted,

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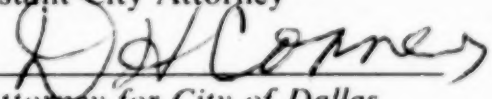
By 
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